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SEP 20 2011

OFFICE OF PETITIONS

In re Application of
Rodgers, et al.
Application No.: 10/695,008
Filed: October 28, 2003
Attorney Docket No. **15128US02**

:
:DECISION ON APPLICATION
:FOR ADJUSTMENT
:PATENT TERM ADJUSTMENT
:

This is in response to the "APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR 1.705(b))" filed September 9, 2011. Applicants requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from four hundred and eighty-eight (488) days to six hundred and sixty-one (661) days.

The request for review of determination of the patent term adjustment is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **six hundred and eleven (611) days**. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On June 10, 2011, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 488 days. On September 9, 2011, applicant submitted the instant petition. Applicant asserts the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed June 10, 2011, is incorrect Specifically, applicants' argue that the period of reduction of 128 days to the patent term adjustment under 37 CFR 1.704(b) for the filing of a Request for Continued Examination filed three months and 128 days after a final Office action July 21, 2009, was mailed is in error..

Applicants' argument has been considered and is persuasive. A review of the application file history reveals that a final Office action was mailed July 21, 2009. On October 21, 2009,

applicants filed a Notice of Appeal. This filing tolled the period under 37 CFR 1.704(b), not the subsequently filed Request for Continued Examination that was filed February 26, 2010. Accordingly, the period of adjustment set forth in § 1.703 should have been reduced under 37 CFR 1.704(b) by 5 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, October 22, 2009, and ending on the date the Notice of Appeal was filed October 26, 2009. **The period of reduction to the patent term adjustment of 128 days is being removed and a period of reduction of 5 days will be entered.**

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is **six hundred and eleven** (709 days of Office delay - 98 days of Applicant delay).

The Office is in receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) which is a requirement for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

Telephone inquiries regarding this specific matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10695008

[Search]

Explanation of PTA Calculation

Explanation of PTE Calculation

PTA Calculations for Application: 10695008

Application Filing Date	10/28/2003	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	709
A Delays	709	PTO Manual Adjustment	123
B Delays	0	Applicant Delay (APPL)	221
C Delays	0	Total PTA (days)	611

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
88	09/16/2011		P028	Adjustment of PTA Calculation by PTO	123	0	
76	06/10/2011		MN/=	Mail Notice of Allowance		0	
75	06/07/2011		IREV	Issue Revision Completed		0	
74	05/28/2011		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
73	05/28/2011		DVER	Document Verification		0	
72	05/28/2011		N/=	Notice of Allowance Data Verification Completed		0	
71	05/28/2011		DOCK	Case Docketed to Examiner in GAU		0	
70	05/28/2011		EX.A	Examiner's Amendment Communication		0	
69	05/28/2011		CNTA	Allowability Notice		0	
68	02/24/2011		FWDX	Date Forwarded to Examiner		0	
67	02/22/2011	12/21/2010	A...	Response after Non-Final Action	63	65	
66	02/22/2011		XT/G	Request for Extension of Time - Granted		0	
65	09/21/2010		MCTNF	Mail Non-Final Rejection		0	
64	09/20/2010		CTNF	Non-Final Rejection		0	
63	07/25/2010		FWDX	Date Forwarded to Examiner		0	
62	07/22/2010		ELC	Response to Election / Restriction Filed		0	
61	06/22/2010		MCTRS	Mail Restriction Requirement		0	
60	06/21/2010		CTRS	Restriction/Election Requirement		0	
59	03/02/2010		FWDX	Date Forwarded to Examiner		0	
56	03/02/2010		ABN9	Disposal for a RCE / CPA / R129		0	
58	02/26/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
57	02/26/2010	10/21/2009	RCEX	Request for Continued Examination (RCE)	128	53	
55	02/26/2010		BRCE	Workflow - Request for RCE - Begin		0	
53	07/21/2009		MCTFR	Mail Final Rejection (PTOL - 326)		0	
52	07/20/2009		CTFR	Final Rejection		0	
51	05/12/2009		FWDX	Date Forwarded to Examiner		0	
50	04/06/2009		A...	Response after Non-Final Action		0	
49	01/06/2009		MCTNF	Mail Non-Final Rejection		0	
48	01/05/2009		CTNF	Non-Final Rejection		0	
47	10/22/2008		FWDX	Date Forwarded to Examiner		0	
44	10/06/2008		DOCK	Case Docketed to Examiner in GAU		0	
46	10/02/2008	09/02/2008	A...	Response after Non-Final Action	30	43	
45	10/02/2008		XT/G	Request for Extension of Time - Granted		0	
43	06/02/2008	08/14/2007	MCTNF	Mail Non-Final Rejection		32	
42	05/29/2008		CTNF	Non-Final Rejection		0	
41	03/17/2008		APBR	Appeal Brief Review Complete		0	
40	03/17/2008		FWDX	Date Forwarded to Examiner		0	
39	03/14/2008		AP.B	Appeal Brief Filed		0	
38	03/14/2008		XT/G	Request for Extension of Time - Granted		0	
37	01/14/2008		APBD	Notice -- Defective Appeal Brief		0	
36	01/10/2008		APBR	Appeal Brief Review Complete		0	
35	01/10/2008		FWDX	Date Forwarded to Examiner		0	
34.1	12/14/2007		APBI	Defective / Incomplete Appeal Brief Filed		0	
34	12/14/2007		AP.B	Appeal Brief Filed		0	
33	12/14/2007		XT/G	Request for Extension of Time - Granted		0	
32	08/14/2007		N/AP	Notice of Appeal Filed		0	
31	08/08/2007		MCTAV	Mail Advisory Action (PTOL - 303)		0	
30	08/03/2007		CTAV	Advisory Action (PTOL-303)		0	
29	07/18/2007		FWDX	Date Forwarded to Examiner		0	
28	07/16/2007		A.NE	Amendment after Final Rejection		0	
27	05/14/2007		MCTFR	Mail Final Rejection (PTOL - 326)		0	
26	05/10/2007		CTFR	Final Rejection		0	
25	03/09/2007		FWDX	Date Forwarded to Examiner		0	
24	03/07/2007		A...	Response after Non-Final Action		0	
23	12/07/2006	12/28/2004	MCTNF	Mail Non-Final Rejection	709	0.5	

22	12/05/2006	CTNF	Non-Final Rejection	0
20	11/02/2006	DOCK	Case Docketed to Examiner in GAU	0
19	10/20/2006	DOCK	Case Docketed to Examiner in GAU	0
18	02/02/2006	LET.	Miscellaneous Incoming Letter	0
21	01/27/2005	IDSC	Information Disclosure Statement considered	0
17	01/27/2005	RCAP	Reference capture on IDS	0
16.7	01/27/2005	M844	Information Disclosure Statement (IDS) Filed	0
16	01/27/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
15	10/16/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
14	10/16/2004	DOCK	Case Docketed to Examiner in GAU	0
13	03/19/2004	LET.	Miscellaneous Incoming Letter	0
12	02/05/2004	WROIPE	Application Return from OIPE	0
11	02/05/2004	ROIPE	Application Return TO OIPE	0
10	02/05/2004	COMP	Application Is Now Complete	0
7	02/04/2004	OIPE	Application Dispatched from OIPE	0
6	02/04/2004	COMP	Application Is Now Complete	0
5	01/28/2004	L128	Cleared by L&R (LARS)	0
4	01/20/2004	L198	Referred to Level 2 (LARS) by OIPE CSR	0
3	01/20/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	11/29/2003	SCAN	IFW Scan & PACR Auto Security Review	0
1	10/28/2003	IEXX	Initial Exam Team nn	0
0.5	10/28/2003	EFILE	Filing date	0

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